

REMARKS

Entry of this paper and consideration of the subject application in view thereof are respectfully requested.

I. Status Of Claims

Claims 1-63 were canceled. Applicant further cancels claims 64-69, 71, and 78-80. Applicant withdraws claims 81. Applicant amends claims 70, 72-74, and 76-77. Applicant adds new claims 82-84. No new matter is added.

II. Background and Interview with Examiner Mabry and Primary Examiner Desai on July 14, 2010

Applicant submitted a Request for Continued Examination (“RCE”) and Submission Under 37 CFR §1.114 on January 13, 2010 in which Applicant canceled claims 64-77 that were pending at the time and added new claims 78-81 (“the January 13, 2010 amendment”). In response, Examiner issued a Notice of Non-Compliant Amendment stating “Claims filed and dated 1/13/10 are no longer drawn to the searched and examined subject matter – see claims dated 5/25/09 and Final Rejection dated 10/13/09. Claims dated 1/13/10 are drawn to different and new patentable subject matter. The claims dated 1/13/09 [sic] need to be amended to the same scope as previous set of claims or file a continuation.”

Applicant’s attorneys, Nanda P.B.A. Kumar and Jenny Johnson, wish to thank Examiner Mabry and Primary Examiner Desai for the courtesies extended during the telephone interview on July 14, 2010. During the interview, the propriety of the Notice of Non-Compliant Amendment was discussed. Specifically, Mr. Kumar expressed to the Examiners that (1) the Notice of Non-Compliant Amendment does not provide any rationale for why claims 78-81 are directed to a different invention, i.e., independent and distinct inventions from the claims filed on May 26, 2009 (“the May 26, 2009 amendment”), such as to require amendment or filing of a continuation, (2) Applicant canceled claims 64-77 and presented new independent claims 78-80 incorporating features that were already in the May 26, 2009 amendment. For example, claim 80 in the January 13, 2010 amendment and claim 76 in the May 26, 2009 amendment are both directed to a process for preparation of montelukast sodium in amorphous form with the same

steps except that claim 80 incorporates features from the defendant claims in the May 26, 2009 amendment, (3) the claims filed January 13, 2010 by Applicant fall squarely within the scope of the claims of May 26, 2009 such that no additional search burden is required at all since Examiner already searched the prior art for claims 64-77, and (4) Applicant is permitted to amend claims in its Submission under 37 CFR §1.114.

After the interview, the Examiners followed up with an Interview Summary which stated the Examiners' suggestion as "(1) amend claims to or within the scope of claims 70-77 as shown in claim set dated 5/26/10 [sic]; (2) cancel claims 78-80 dated 1/13/10 and (3) withdraw/restrict or cancel claim 81 of claim set dated 1/13/10 as it is drawn to a compound which is patentably distinct, would be a burden to Examiner to examine and is not within the scope of the invention as originally presented."

III. Claim Amendments

The Examiner has not made clear why claim amendments are required in this case. No evidence or rationale has been provided as to how additional search burden is required to examine claims 78-80 after having already examined claims 64-77. The interview with Examiners Mabry and Desai resulted in no meaningful conclusion as to why claims amendments or filing of a continuation are the only options after Applicant presented new claims in its RCE submission under 37 CFR §1.114. The Interview Summary does not clarify these issues, nor does it present clear suggestions other than to withdraw claim 81 because it is directed to a compound.

Despite the Interview Summary being unclear as to the suggested course of action that the Examiner believes Applicant should take in order to overcome the Notice of Non-Compliant Amendment, Applicant has canceled claims 78-80, withdrawn claim 81 and amended the previous set of claims (claims 64-77) presented in Applicant's May 26, 2009 response in a good faith attempt to proceed with prosecution in this matter.

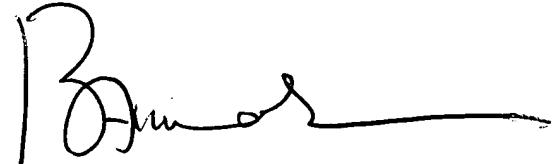
III. Conclusion

Applicant believes this response to be a full and complete response to the Notice of Non-Compliant Amendment. Accordingly, favorable reconsideration in view of this response and allowance of all of the pending claims are earnestly solicited.

If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

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Respectfully submitted,



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